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No. 91-175

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JOHN BURCHE, PETITIONER

v.

DEGUSSA CARBON BLACK CO. and
ASHLAND CHEMICAL CO.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT ASHLAND CHEMICAL CO. IN OPPOSITION

Thomas W. Hill
Counsel of Record for Respondent
Ashland Chemical Co.
Emens, Hurd, Kegler & Ritter Co., L.P.A.
Capitol Square
65 East State Street
Columbus, Ohio 43215

QUESTIONS PRESENTED

1. Was the United States Court of Appeals for the Sixth Circuit correct in holding that the district court properly granted Ashland's motion for an involuntary dismissal of petitioner's claims under Fed. R. Civ. P. 41(b)?

2. Was the Sixth Circuit correct in finding that the district court did not abuse its discretion in: limiting petitioner's discovery requests, denying petitioner's untimely request for a jury trial, and finding that the district court was not biased against petitioner because he was proceeding pro se?

PARTIES TO THE PROCEEDING

The petitioner is John Burche, an individual resident of Davenport, Iowa. Respondents are Degussa Carbon Black Co. and Ashland Chemical Co. Degussa Carbon Black Co. is a subsidiary of Degussa AG, which is publicly traded on the Frankfurt, Germany Exchange. Ashland Chemical Co., at the time of the events in question in this case, was a division of Ashland Oil, Inc. and is now a wholly owned subsidiary of Ashland Oil, Inc., which is a publicly owned corporation.

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STATEMENT OF FACTS

In 1988, petitioner, John Burche was working for a company called Bandag, Inc. in Davenport, Iowa. That same year, petitioner interviewed with representatives from Ashland Chemical Company's Carbon Black Division (hereinafter "Ashland") in Akron, Ohio. Before commencing the interview process, Petitioner read and signed an employment

application in which he acknowledged that no representative of Ashland could offer him any benefits or terms and conditions of employment other than in writing. Petitioner admitted that he read and understood that acknowledgment before he signed it and knew that he was bound by it. Ashland thereafter confirmed in writing an offer of employment to Petitioner. Included among the terms of that written confirmation was Ashland's written relocation policy.

Ashland's written relocation policy provided that Ashland would assume certain relocation costs where a particular employee chose to follow the required procedures. The policy allowed Petitioner the option of having a Relocation Management Company purchase his home at a cost determined by the median of two appraisals obtained on his home. Petitioner accepted that option in

writing. As a result, two independent appraisals were conducted on Petitioner's home in Davenport, Iowa. One of the appraisals was for $64,000.00 and the other was for $61,500.00. The median price was therefore $62,750.00.

Petitioner rejected the Relocation Management Company's offer of $62,750.00 and also rejected a subsequent offer of $70,000.00, deciding instead to keep the house. Petitioner continued to work for Ashland until November 1988, when Ashland sold its Carbon Black Division to DeGussa. Thereafter, Petitioner continued to work for Degussa until March 1989. After he was terminated by DeGussa, Petitioner moved back to that house in Davenport, Iowa, where he now lives.

After his termination by DeGussa, Petitioner filed suit claiming that an Ashland Vice President, Mr. Reed, orally promised petitioner that Ashland would pay

him the difference between the Petitioner's cost in the house and the actual sale price of the house. This was despite the fact that Petitioner admitted that he had read, understood, signed, and was bound by his employment application which, as the district court found, indicated on its face that Burche could not rely upon any alleged oral promises.

Petitioner alleged at trial, without any supporting documentation, that he had spent in excess of $114,000 on his home. This undocumented claim was belied by the fact that the bank that issued the loan to Petitioner to build the house in 1979 had appraised the fair market value of the house at the time at $70,000.

The district court held that Burche failed as a matter of law to prove the fourth element of promissory estoppel under Ohio law: proof that the party asserting the estoppel was injured by the

reliance. The Court held that because Petitioner never sold his Davenport, Iowa home, he has not incurred any loss resulting from the alleged oral promise that Petitioner claimed was made to him. Indeed, Petitioner continued to live in that house through the trial of this case.

The "Amended Value Sales Option" to which Petitioner makes reference provided that:

> The offer price by the Relocation Management Company can be amended to match a bona fide written sales agreement from a third party to purchase your property at a price higher than the original offer submitted.

However, Burche never received any bona fide written sales agreement from any third party to purchase his home at a price higher than the $61,500 offered to him by the Relocation Management Company.

ARGUMENT

The petition for a writ of certiorari

in this case represents nothing more than dissatisfaction with the outcome of a lawsuit. The decisions of both the district court and the court of appeals result from the routine application of non-controversial, garden variety state law principles. This case, therefore, presents nothing that merits review by this Court.

The decision of the United States Court of Appeals for the Sixth Circuit in this case does not conflict with any decisions of other federal appellate courts. Likewise, this case does not present a situation of departure from the accepted and usual course of judicial proceedings on the part of either the district court or the court of appeals. Nor does the decision of the United States Court of Appeals in this case conflict with any of the decisions of this Court or present any important question of federal

law warranting review by this Court. In short, the petition for a writ of certiorari in this case does not satisfy any of the reasons set forth in Sup. Ct. R. 10, and in fact the petition does not even address any of the reasons set forth in that rule.

The district court denied plaintiff/petitioner's request for irrelevant discovery, as well as his untimely request for a jury trial. Both of those rulings were within the discretion of the district court, and the Sixth Circuit found that such rulings were not "clearly erroneous." Petitioner's claims of bias by the district court judge are spurious. As the Sixth Circuit stated in rejecting this contention:

> To the contrary, the court patiently explained what rules and procedures Burche needed to follow in order to fully litigate his case.

Petitioner's only substantive legal claim

is his state law claim that promissory estoppel entitles him to relief, despite the lack of any actual damages. The lack of damages alone justified the dismissal of Petitioner's this claim. Likewise, the fact that Petitioner admitted that he signed a document acknowledging that he could not rely on any oral promises bars his claim as a matter of law based on state law defenses of waiver and estoppel. In any event, Petitioner's claim raises strictly questions of state law, and no federal questions are implicated.

The Supreme Court rules make clear that "review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. In exercising this discretion, this Court has historically accorded great deference to decisions of the lower federal courts regarding state law. Regents of University of Michigan v. Ewing, 474 U.S.

214, 224, n. 10 (1985); Virginia v. American Booksellers Ass'n, 484 U.S. 383, 395 (1988). Here, the district court and court of appeals found on the admitted facts that Petitioner's claim based upon promissory estoppel fails as a matter of state law. Other than expressing his disagreement and disappointment with that result, Petitioner offers no cogent reason why this Court should review that decision.

CONCLUSION

Nothing in the petition for writ of certiorari presents a valid reason for granting review in this case. The decisions of the lower federal courts are correct on the merits, and there are no conflicts with decisions of this Court or with decisions of the federal circuit courts of appeal. In consideration of the foregoing, respondent Ashland Chemical Company respectfully requests that the

Petition for a Writ of Certiorari be denied.

Date: August 27, 1991

Respectfully submitted,

Thomas W. Hill

Thomas W. Hill
Counsel of Record for
Respondent Ashland Chemical
Company
Emens, Hurd, Kegler &
Ritter Co.
Capitol Square
65 East State Street
Columbus, Ohio 43215